

CLIENT ALERT

## Supreme Court Holds Time in Security Screening Noncompensable

DECEMBER 11, 2014

On December 9, 2014, the United States Supreme Court, in an unanimous decision, held that the time workers spent waiting for and undergoing security screenings post-shift is noncompensable under the Fair Labor Standards Act (FLSA). The Court found that because the security screenings were not “integral and indispensable” to the work the employees were hired to perform, the employees need not be compensated for time spent at the screening. *Integrity Staffing Solutions, Inc. v. Busk*.

The plaintiffs, former Integrity employees, filed a putative class action on behalf of similarly situated warehouse workers for alleged violations of the FLSA and Nevada labor laws. Plaintiffs alleged that Integrity required its employees, who retrieved and packaged products for delivery to a third-party’s customers, to undergo security screenings at the end of their shifts. The plaintiffs further alleged that they spent nearly 25 minutes per day going through security screenings, and that they were entitled to compensation for that time. The plaintiffs claimed the security screenings were conducted to prevent employee theft and were solely for the benefit of Integrity and its customers. The district court dismissed the complaint for failure to state a claim, finding that because the time spent waiting for and undergoing security screenings was not integral and indispensable to the employees’ principal activities, it was a postliminary activity and not compensable. The Court of Appeals for the Ninth Circuit reversed, ruling that although post-shift activities are generally noncompensable, when the post-shift activities are necessary to the principal work performed, and are conducted for the employer’s benefit, such activities become compensable.

The Supreme Court vacated and remanded the Ninth Circuit’s decision, holding that the postliminary screening time is indeed noncompensable under the FLSA. The Court first noted that after the enactment of the FLSA, courts broadly interpreted work and work-time to include various pre- and post-shift activities and thus significantly expanded employer liability. In response to the increased litigation and damage awards, Congress passed the Portal-to-Portal Act which, among other things, exempted employer liability for activities that are preliminary to or postliminary to the principal activity or activities the employee is employed to perform. The Court went on to state that it has consistently interpreted the term “principal activity or activities” to embrace all activities which are an integral and indispensable part of the principal activities.” The Court further explained that an activity is integral and indispensable to the principal activities an employee is employed to perform if that activity is an “an intrinsic element of the employee’s principal activities and one with which the employee cannot dispense if he is to perform his principal activities.”

In holding that the security screenings were noncompensable postliminary activities, the Court first found that the screenings were not a principal activity that the workers were employed to perform. Specifically, Integrity did not hire the plaintiffs to undergo security screenings, but rather hired them to retrieve and package products for delivery. The Court then found that the security screenings were not integral and indispensable to the plaintiffs’ duties as warehouse workers because the screenings were not an intrinsic element of retrieving and packaging products, and the screenings were not necessary for the plaintiffs to perform their work. The Court also rejected the Ninth Circuit’s focus on whether the employer required the particular activity. The Court held that such a test is overly broad and would encompass the very activities the Portal-to-Portal Act was intended to exclude. Finally, the Court dismissed plaintiffs’ argument that their time spent waiting was compensable because Integrity could reduce the time. The Court found this fact irrelevant to the nature of the activity and that it could be best addressed at the bargaining table.

As wage and hour litigation continues to increase, employers should consider reviewing policies and practices to ensure compliance with federal, state, and local wage and hour laws. In light of *Integrity Staffing*, employers should examine whether the activities they require of their employees pre- or post-shift are integral and indispensable to the principal activities that the employee was hired to perform, and determine, with the aid of counsel, whether that time is compensable.

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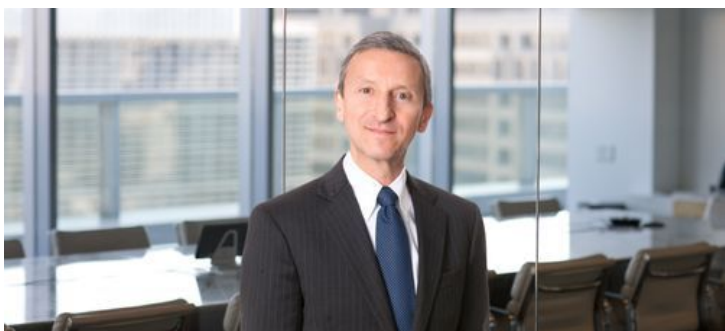
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